"It must be stressed here that the provisions in section 283 of the Criminal Procedure Code which provide for terms of imprisonment in default of payment of fines have no application in the recovery of a penalty ordered under section 13 of the Prevention of Corruption Act. The penalty is to be treated as a fine but only to the extent and for the purpose of its recovery as such and is not to be treated as a fine in default of which a term of imprisonment may be imposed."

In that case the accused pleaded guilty on two charges. The first charge was that he resold 17 cinema tickets which is an offence under Rule 8(3) of the Entertainments Duty Rules, 1953 and the second charge was that he had corruptly offered a gratification to wit $29/- to a police constable as an inducement for forbearing to do an act in relation to his principal's affairs, namely, refraining from taking action against the accused under the Rules, an offence under section 4(b) of the Prevention of Corruption Act, 1961. On the first charge he was fined $200/-, in default one month's imprisonment. On the second charge he was fined $500/-, in default four months' imprisonment. In addition he was ordered to pay $29/- by way of penalty to the Government of Malaysia, in default one week's imprisonment. The order to pay $29/- to the Government was made under section 13 of the Prevention of Corruption Act whose provisions relating to the recovery of a penalty are similar to those of section 16(A)4 of the Act with regard to the recovery of arrears of contributions. Section 13 of the Prevention of Corruption Act reads:

"Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within the time and to the body and in the manner specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and *any such penalty shall be recoverable as a fine.*"

(Italics mine)

I agree with the reasoning of Ajaib Singh J. and it must *a fortiori* apply in the instant case where the arrears of contributions by their very nature constitute a civil debt and were not ordered to be paid by way of a penalty. In the result the appeal must be allowed and the order of committal made by the learned Magistrate is accordingly hereby set aside.

*Appeal allowed.*

Solicitors: *Philip Nainan & Co.*

## PUBLIC PROSECUTOR v. ZAMIHIYAH

[O.Cr.J. (K.C. Vohrah J.) April 12, 1986]

[Temerloh – Criminal Trial No. 11 of 1984]

*Penal Code, ss. 309A and 309B – Infanticide – Loss, suffering etc. – Sentence.*

The prisoner caused the death of her only child aged 2 months by throwing it out of a moving car. She was found to be suffering from puerperal psychosis which persisted for 2 months after childbirth and was the cause of her act. She pleaded guilty to a charge under section 309A of the Penal Code. Evidence was adduced that she had waited for 8 years for a baby child, a baby girl. The court took consideration of her loss, suffering and the fact that she had been in prison since January 1983, for a period of 3 years 2 months and 19 days. She was accordingly sentenced to that period of imprisonment and when the court rose, she was set free.

CRIMINAL TRIAL.

*Azhar bin Mohamed* (Deputy Public Prosecutor) for the prosecution.

Prisoner in person.

**K.C. Vohrah J.**: The prisoner has lost her only child aged 2 months, born to her, through her own hands. She threw her baby out of a moving car and the baby died. Her illness, puerperal psychosis, a disease associated with childbirth and which persists for 2 months after childbirth, was the cause of her act. That act would have been murder which attracts the death sentence but the law of our country recognise this particular type of illness and the Public Prosecutor has accordingly amended the murder charge to one under section 309A punishable under section 309B of the Penal Code which attracts a maximum term of 20 years imprisonment. She has pleaded guilty to a charge for an offence under section 309A.

The prisoner waited 8 long years for the birth of her only child, a baby girl and she has now lost the child. She has suffered enough and I take that into consideration. I also take into consideration that the prisoner has been in prison since January 23, 1983, a period of 3 years 2 months and 19 days. I accordingly sentence her to a term of imprisonment of 3 years 2 months 19 days from the date of arrest. When the Court rises she is free to go.

*Order accordingly.*